

FEDERAL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Feb 27 11 21 AM '95
 Washington, D.C.

FCC 95-64

In the Matter of)
) CC Docket No. 94 - 120
 AT&T Communications)
 Tariff F.C.C. Nos. 9 and 11) Transmittal No. 6788

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 1995 ; Released: February 24, 1995

By the Commission:

I. INTRODUCTION

1. On April 15, 1994, AT&T Communications (AT&T) filed Transmittal No. 6788 to offer Feature Group A and B Connection Service.¹ In an Order released August 12, 1994, the Common Carrier Bureau suspended Transmittal 6788 for five months and initiated an investigation of the reasonableness of the offering under Section 201(b) of the Communications Act of 1934, as amended (Act).² In this Order we terminate that investigation, and find Transmittal 6788 unlawful for the reasons stated below. We also conclude that, if AT&T chooses to refile a tariff offering its Feature Group A and B Connection Service, it should incorporate the modifications described below. In general, those modifications involve: adding specific and clear ordering and cancellation procedures for the service; offering the Access Coordination Function independently of the Feature Group Connection Service; offering for resale the entrance facilities independently of the direct trunked transport facilities; clarifying application of nonrecurring charges for the service; and amending its tariff to collect charges from exchange carriers using facilities leased to AT&T that the LECs continue to use in their own provision of Feature Group A and B Service to the LECs' customers of that service.

¹ Transmittal 6788 would amend AT&T's private line Tariff F.C.C. Nos. 9 and 11 to introduce "Feature Group A (FGA) and Feature Group B (FGB) Connections which provide the physical connection between a Local Exchange Company End Office Switch and the AT&T Central Office, for connection to AT&T Private Line Services." AT&T proposes to apply a single FGA (or FGB) charge to each FGA (or FGB) service it connects.

² AT&T Communications Tariff F.C.C. Nos. 9 and 11, Transmittal No. 6788, 9 FCC Rcd 4480 (Com. Car. Bur. 1994) (Suspension Order). Section 201(b) of the Communications Act of 1934, 47 U.S.C. § 201(b), requires all practices in connection with interstate communications by wire to be just and reasonable.

II. BACKGROUND

A. LEC Switched Access Feature Groups A and B Service

2. Immediately following divestiture and implementation of the Commission's access charge rules,³ the LECs' interstate access tariffs offered three types of switched access service, known as Feature Groups. Feature Groups A and B are local exchange services that were used to provide interstate access service to interexchange carriers (IXCs) other than AT&T prior to the widespread availability of equal access. The technical and performance characteristics of Feature Groups A and B differ significantly from those of Feature Group C. One important difference is that end users must dial a seven digit local exchange number in order to obtain access to their preferred long distance carrier. The importance of Feature Groups A and B to the interexchange industry declined considerably with the nationwide availability of Feature Group D, the "equal access" service arrangement. Feature Group D equal access enables end users to obtain access to their presubscribed interexchange carrier by dialing "1+". Nonetheless, Feature Groups A and B continue to be the primary switched access service offerings for IXCs other than AT&T in end offices not converted to equal access. However, these services are also used by non-carrier customers, as discussed below.

3. Feature Group A access⁴ provides a customer⁵ with dedicated transmission facilities

³ See MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983), mod'd on recon., 97 FCC 2d 682 (1983), mod'd on further recon., 97 FCC 2d 834 (1984), aff'd in principal part and remanded in part, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), 101 FCC 2d 1222 (1985), aff'd on further recon., 102 FCC 2d 849 (1985).

⁴ For ease of discussion, we will refer primarily to Feature Group A service in this portion of the text, although the same principles apply to Feature Group B service. Feature Group A and Feature Group B differ in the following ways: Feature Group A service uses a line-side connection at the LEC's end office, meaning those calls are not processed through that end-office switch. Feature Group A uses local numbers which differ by LEC calling area. Feature Group B service, on the other hand, is a trunk-side connection at the LEC's end office, but calls are processed through a uniquely designated end office called a dial tone office due to difficulty in separating local traffic from access traffic. Because Feature Group B is a trunk-side connection, Feature Group B offers greater functionality and is more useful for IXC services.

⁵ As discussed in more detail below, the "customer" ordering Feature Group A access is not necessarily an IXC. A non-carrier entity may order Feature Group A access from a LEC-- either directly or using an IXC as its ordering agent -- to be used in conjunction with interexchange service ordered from an IXC. We use the term "customer" throughout this Order to refer to non-carrier entities and smaller IXCs that subscribe to Feature Group A service. The terms "end user" and "end user customer" refer to the customer of an IXC who uses Feature

from an IXC's Point of Presence (POP) to a LEC central office, called the dial tone office. End users located within the LEC's service area⁶ obtain access to the Feature Group A customer's interexchange service by dialing a seven-digit local number that is assigned to the Feature Group A customer in the dial tone office. In some situations, traffic may be routed through a LEC end office serving the IXC POP (serving wire center), which is located between the IXC's POP and the dial tone office. Traffic is then switched from the dial tone office to the LEC end office which furnishes the line to the customer's premises.

4. Two types of customers have been the primary subscribers to Feature Group A access. First, smaller IXCs have relied upon it to provide interstate switched toll service at end offices where neither Feature Group D equal access nor Feature Group B is available. Within LATAs in which such an IXC takes Feature Group A, a caller dials the Feature Group A seven digit number to reach the IXC's POP and then dials an authorization code and the ten digit number the customer wishes to call. The caller must pay any local toll or message unit charges incurred to reach the IXC's POP in addition to the IXC's toll charges because interstate Feature Group A calls cannot be distinguished from local calls placed to the dial tone office. Generally, when the LEC terminates the call through a Feature Group A access arrangement, however, it will carry the call anywhere within the receiving service area without assessing any additional toll charges or local message unit charges, even if the called party is located outside of the local service area of the IXC's Feature Group A dial tone office.

5. Feature Group A is also used by non-carrier entities as part of an interstate Foreign Exchange (FX) or Off Network Access Line (ONAL) arrangement. In this configuration, the Feature Group A customer obtains from the LEC a combination of local exchange service and dedicated interoffice transport facilities linking the LEC dial tone office with an IXC POP. The IXC POP is linked to the out-of-state Feature Group A customer by an interstate private line. This service configuration enables end users in the area served by the dial tone office to reach the out-of-state Feature Group A customer without incurring interstate toll charges. The dial tone office processes the call originating in its service area as a local call and delivers it to the dedicated trunked transport and ultimately the IXC's interstate private line for transmission to the Feature Group A customer. For example, a customer located in Newark, New Jersey may subscribe to Feature Group A FX service in New York City by obtaining a seven digit local number in a New York City end office. A caller in New York City would be able to dial that seven digit access code to reach the Feature Group A customer's location in Newark without incurring toll charges. Feature Group B is frequently used by callers to connect to enhanced service provider offerings in lieu of 800 number access because the Feature Group B number is the same nationwide.

Group A service to get access to the IXC's interexchange service.

⁶ In the case of the former Bell Operating Companies, these service areas are called Local Access and Transport Areas, or LATAs.

6. Prior to the Commission's 1993 restructuring of local transport rates,⁷ transport costs for Feature Groups A and B were recovered through usage-based charges, pursuant to the "equal charge per minute of use" requirement of the Modification of Final Judgment (MFJ).⁸ This approach essentially required all interstate access service customers to pay averaged rates. The actual type of facilities -- voice grade, DS1 or DS3 -- that was used to transport a customer's traffic between the IXC's POP and the LEC serving wire center did not affect the charges that were assessed to Feature Groups A and B customers under the equal charge rule. Rather, the rates were generally usage-sensitive and distance sensitive.⁹

B. The Local Transport Rate Restructure

7. Under the terms of the MFJ, the equal charge rule expired on September 1, 1991. The Commission required LECs to maintain the equal charge rate structure thereafter, pending further agency action. In the local transport rate restructure proceeding, the Commission replaced the equal charge rule with a new system of interim rate elements designed to reflect more closely the manner in which the costs of providing transport services are incurred.¹⁰ The interim local transport rate structure established in the Transport Order consists of four unbundled rate elements: entrance facilities; direct trunked transport; tandem switched transport; and the interconnection charge. Flat-rated charges apply to the entrance facilities and direct

⁷ Transport Rate Structure and Pricing, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (Transport Order); recon., 8 FCC Rcd 5370 (1993) (First Reconsideration Order); further recon., 8 FCC Rcd 6233 (1993); further recon., FCC No. 94-325, rel. Dec. 22, 1994 (collectively, Transport Restructure Orders).

⁸ United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983). The "equal charge per minute of use" rule required that charges for delivery or receipt of traffic of the same type between end offices and facilities of IXCs within an exchange area to be equal, per unit of traffic delivered or received, for all interexchange carriers. See App. B at para. B(3).

⁹ Transport charges for terminating Feature Group A access service were usually based on the Feature Group A customer's usage and the distance between the serving wire center of the IXC POP and the end office serving the called party. Transport charges for originating Feature Group A access service were also based on the Feature Group A customer's usage, and the distance between the serving wire center to which the IXC's POP was linked and the Feature Group A customer's dial tone office, not the end office serving the calling party. This difference arose because most LEC switches at the end office were unable to differentiate between an originating Feature Group A call and a local call. Hence, originating Feature Group A access charges were assessed as though the call originated from an end user served by the dial tone office.

¹⁰ See Transport Rate Structure and Pricing, CC Docket No. 91-213, 6 FCC Rcd 5341 (1991).

trunked transport, while usage-sensitive charges apply to tandem switched transport. The interconnection charge is usage sensitive and is paid by all customers of interstate switched access service, even those that do not subscribe to LEC switched transport service.¹¹

8. In the First Reconsideration Order, the Commission specifically addressed application of the transport rate restructure to Feature Group A access service.¹² The Commission directed the LECs to apply the flat-rated entrance facility element for transport service between the IXC POP and the LEC end office serving the IXC POP (serving wire center) for both originating and terminating Feature Group A traffic. If the LEC serving wire center is not the Feature Group A dial tone office, the flat-rated direct trunked transport charge applies to transport between the serving wire center and the dial tone office where the call terminates. Usage-sensitive tandem switched transport rates, excluding the tandem charge, apply to transport between the dial tone office and the end office where the call terminates. The Commission did not specifically direct LECs to bill any particular customer class, *i.e.*, IXCs or end users, for these rate elements.¹³

C. The Impact of the Rate Restructure on LEC Feature Groups A and B Billing

9. Feature Groups A and B customers generally need analog voice grade transmission service to deliver their traffic from the dial tone office to the IXC POP. AT&T's tariffs, however, typically require its customers to deliver traffic to its POPs via digital high capacity facilities.¹⁴ This requirement means that Feature Group A traffic must be delivered over a DS1 or higher capacity facility. Since a DS1 facility is usually the equivalent of 24 voice grade channels, it is capable of carrying far greater volumes of traffic than the typical Feature Group A or B customer requires. In order to satisfy AT&T's interface requirement, LECs usually aggregate traffic from several different Feature Groups A and B customers on high capacity facilities to transport traffic to the AT&T POP. As noted above, before transport rates were restructured, Feature Group A customers paid uniform charges per unit of traffic, regardless of specific transmission service that the LEC actually used to carry traffic between the IXC POP and the LEC wire center serving the POP. After the rate restructuring, the LECs assess different entrance facility and direct trunked transport charges based on the type of transmission service used (e.g. voice grade, DS1 or DS3).

10. The Transport Restructure Orders do not require LECs to bill Feature Group A end user customers directly for their pro rata share of the charges for high capacity entrance facilities

¹¹ Transport Order, 7 FCC Rcd at 7009-10.

¹² First Reconsideration Order, 8 FCC Rcd at 5372-73.

¹³ Id.

¹⁴ See AT&T Tariff F.C.C No. 10, § 100. Tariff 10 provides mileage and administrative requirements concerning the operation of AT&T's offices. See also AT&T Direct Case at 7 (stating that AT&T requires traffic to be delivered at a DS1 level at a minimum).

and direct trunked transport facilities. These facilities are used to carry traffic between AT&T's POPs and the LEC serving wire centers and between the serving wire centers and the Feature Group A dial tone offices, respectively.¹⁵ If a LEC elects to use this pro rata approach, it would recover from a Feature Group A customer a portion of the total entrance facility charge for the transmission service used to carry the customer's traffic based on the customer's relative share of the capacity of the facility that is actually used for transport service. Under this approach, the LEC would assume the risk of underutilization of the transmission facility. Most LECs, however, do not offer this billing option. Instead, they require a single customer to be responsible for paying the charges for entrance facilities and direct trunked transport service. These LECs thus generally bill AT&T for the entire charge for the high capacity entrance facilities used to deliver Feature Group A traffic to AT&T's POP, based on the rationale that AT&T has imposed the requirement that traffic be delivered via a DS1 or other high capacity digital facilities. Under this approach, AT&T bears the risk of underutilization, since it is required to pay the entrance facility charges regardless of the amount of capacity of the facility that is actually in use.

11. AT&T initially raised this billing problem during the Bureau's review of the transport restructure tariffs.¹⁶ AT&T argued that the LECs' proposal to charge the high capacity entrance facilities rates to a single customer was not required by the Transport Orders. In the Transport Tariffs Order,¹⁷ the Bureau stated that split billing by the LECs is crucial for customers to obtain maximum benefits from the restructured transport rates.¹⁸ The Bureau directed the LECs to refer the split billing issue, particularly as it affected Feature Group A service, to the industry's Ordering and Billing Forum for resolution and to report back to the Bureau on their progress in resolving the "split billing issue." The Bureau stated at that time that if those discussions did not produce substantial progress toward a mutually acceptable solution, the Commission might consider prescribing a method for providing split billing.¹⁹

12. Since the transport restructure tariffs took effect in December, 1993, the LECs have continued billing end user customers for the usage-rated transport elements of Feature Group A

¹⁵ See Transport Restructure Orders.

¹⁶ See AT&T Petition filed in local transport restructure tariff review, November 15, 1993.

¹⁷ In the Matter of Local Exchange Carrier Switched Local Transport Restructure Tariffs, 9 FCC Rcd 400 (Com. Car. Bur. 1993)(Transport Tariffs Order).

¹⁸ Id. at 426. Under "split billing" LECs might, for example, bill an end user customer for its use of a high capacity facility by dividing total flat charges for the entrance facility among all of the end users whose traffic is carried over the facility.

¹⁹ Id. at 427.

and B.²⁰ Many LECs, however, have not offered to split the charges for the use of the flat-rated entrance facilities among these customers. Rather, they are now billing AT&T for the entire entrance facility and, in some cases, the direct-trunked transport rate elements for Feature Group A and B service under their transport restructure tariffs. The LECs contend that AT&T is the ordering customer for the entrance facilities -- and, where appropriate, for the direct trunked transport element -- used to connect LEC facilities to AT&T's POPs because AT&T has specified that these facilities must be high capacity.²¹ Moreover, the LECs claim that because those high capacity facilities are dedicated to AT&T's use, AT&T, as the cost causer, should be responsible for payment.

13. At least two LECs, Southwestern and NYNEX, have developed and now offer interim billing options for transport.²² Southwestern's tariffed "Interim Split Billing Option," for example, credits the bills of "primary customers" to whom it charges an entire entrance facility based on the number of "secondary customers" sharing the facility. For every "secondary customer" the primary customer identifies, the LEC gives the primary customer a credit equal to 1/24th of the monthly DS1 charges normally billed. Thus, if AT&T advised Southwestern that 21 parties were sharing the use of an AT&T DS1 entrance facility, Southwestern would credit AT&T's bill for 21/24ths of AT&T's normal monthly DS1 charge. AT&T would pay Southwestern only the remainder, or 3/24ths, of the entire billed amount. The remaining 21/24ths of the monthly charges would be billed to the various secondary customers. NYNEX's tariffed "Shared Billing Arrangement" allows individual customers to order lower

²⁰ See, e.g., Letter from Joseph J. Mulieri, Director, FCC Relations, Bell Atlantic Network Services, Inc., to Gregory J. Vogt, Chief, Tariff Division, FCC (dated May 4, 1994); Letter from Cyndie Eby, Executive Director, Federal Regulatory, US West, Inc., to Gregory J. Vogt, Chief, Tariff Division, FCC (dated May 4, 1994).

²¹ The LECs generally claim that this billing practice is consistent with the Commission's restructured rates for transport service. For example, Pacific has observed that paragraph 21 of the Transport Order states that "a flat-rate entrance facilities charge is appropriate because the entrance facilities are dedicated to the sole use of one IXC and, therefore, that IXC should bear the full cost of the facilities." It argues further that paragraph 22 of the Transport Order applies the same reasoning to the billing of direct trunked transport. See Letter from Jo Ann Goddard, Pacific Bell, to Gregory Vogt, Chief, Tariff Division, FCC (dated May 4, 1994). NYNEX argues that the restructure in general changed the billing structure from an equal charge per minute of use (MOU) to a facility-based rate structure. NYNEX adds that "during the conversion of the MOU billing structure to the new facility-based billing structure, the interface level was the key record for determining the party to be billed for the entrance facilities." See Letter from Kenneth Rust, NYNEX, to William F. Caton, Acting Secretary, FCC (dated May 4, 1994). It thus appears that NYNEX has decided to bill AT&T for the entrance facilities because AT&T requires that connections be made to its POP at a DS1 interface level.

²² Southwestern Bell Telephone Company Tariff F.C.C. No. 73, § 6.8.15; NYNEX Telephone Company Tariff F.C.C. No. 1, § 6.7.14.

capacity facilities from NYNEX for connection to the IXC's higher capacity facilities. NYNEX then maintains separate facility and billing records for each customer. Unlike Southwestern and NYNEX, however, many LECs have no plans to provide a billing option that would apportion the charges for high capacity transport facilities among several customers, and are opposed to this approach. The effect of split billing on AT&T's tariff transmittal is discussed in para. 58 of this Order.

D. Transmittal 6788

14. AT&T responded to the LECs' new billing practice by proposing to resell the service that the LECs bill to AT&T. AT&T determined that if the LECs billed AT&T for the entire charge for flat-rated entrance and direct trunked transport facilities used to provide Feature Group A access, AT&T would in turn bill the LECs' existing Feature Groups A and B access customers for these charges. During the transport tariff review proceeding,²³ AT&T objected to, and has apparently declined to use, the billing options in the NYNEX and Southwestern tariffs that permit the apportionment of charges for high capacity facilities used to provide Feature Group A voice grade service among multiple Feature Group A customers. AT&T claims these billing options would still hold it, as the "primary customer," responsible for any unused capacity or unpaid charges of the secondary customers.²⁴ By Transmittal 6788, AT&T proposes to offer, on a resale basis, the two flat-rated local transport portions of Feature Group A and B access service -- the entrance facility and direct trunked transport rate elements -- in conjunction with the interexchange private line services that AT&T was already providing.

15. Transmittal 6788 defines a "Feature Group A Connection" as a transmission path between the line side of a LEC end office switch and the AT&T POP for connection to AT&T Private Line services. Transmittal 6788 states that a Feature Group A Connection provides line side access to a LEC end office switch, with an associated seven digit local telephone number, for an AT&T end user customer's use in originating and terminating calls. Similarly, Transmittal 6788 defines a "Feature Group B Connection" as the transmission path between the trunk side of a LEC end office switch and the AT&T POP for connection to AT&T private line services. It states that a Feature Group B Connection provides trunk side access to a LEC end office switch, with an associated uniform 950-XXXX access code, for an AT&T end user customer's use in originating and terminating calls. Transmittal 6788 also requires parties taking AT&T's Feature Group A or B Connection to purchase an "Access Coordination Function," which authorizes AT&T to design, order, install, and perform other provisioning activities for the end user. The proposed tariff revisions further mandate that a customer must subscribe to AT&T's Feature Group A and B Connection Service when the customer orders the Access Coordination Function for Feature Group A and B switched access service.²⁵

²³ Transport Tariffs Order, 9 FCC Rcd at 423-24.

²⁴ Id.

²⁵ See AT&T Tariff F.C.C. No. 11, Sections 8.2.8 and 8.2.9.

16. On August 1, 1994, the Bureau suspended Transmittal 6788 for five months and initiated an investigation to determine the reasonableness of the tariff revisions described in Transmittal 6788.²⁶ The purpose of this investigation was to determine whether AT&T's offering of Feature Group A and B Connection Service under Transmittal 6788 constitutes an unreasonable practice in violation of Section 201(b) of the Act. The Bureau was particularly concerned that customers of LEC Feature Group A or B access service might be billed under the AT&T tariff for the access portion of their end-to-end service²⁷ even if they did not order their access service through AT&T. The Bureau was also concerned that AT&T proposed to resell the local transport entrance facility and direct trunked transport rate elements on a bundled basis.

17. The Bureau issued a subsequent Order designating the specific issues to be examined in the investigation, and established schedules and procedures for the filing of the pleadings.²⁸ In the section below, we discuss those issues and our resolution of them.

III. ISSUE ANALYSIS

18. Section 201(b) of the Act requires that a carrier's "charges, practices, classifications, and regulations" for a communication service be just and reasonable. In the Designation Order, the Common Carrier Bureau specified six issues regarding the reasonableness under Section 201(b) of the rates, terms and conditions of Feature Group A and B Connection Service, as proposed in Transmittal 6788. The issues concern whether: (1) it is a reasonable practice for AT&T to bill an end user customer for AT&T's service when the end user has not affirmatively ordered the service from AT&T; (2) AT&T's bundling the Access Coordination Function with Feature Group A and B Connection Service is a reasonable practice; (3) AT&T's bundling the entrance facility and direct trunked transport rate elements are reasonable; (4) the terms and conditions of service provided under Transmittal 6788 are reasonable; (5) the proposed rates for Feature Group A and B Connection Service are reasonable; and (6) it is a reasonable practice for AT&T to charge Feature Group A and B end users for Feature Group A and B Connection

²⁶ Suspension Order, 9 FCC Rcd at 4480, 4483.

²⁷ Access service is generally comprised of the customer line or loop, a switching element and transport to the IXC POP. An information surcharge and equal access charges may also apply.

²⁸ AT&T Communications Tariff F.C.C. Nos. 9 and 11, Transmittal No. 6788, CC Docket No. 94-120, 9 FCC Rcd 6077 (Com. Car. Bur. 1994) (Designation Order). The pleading cycle was subsequently amended to accommodate AT&T's request to permit AT&T and other interested parties additional time to prepare their pleadings and responses. See AT&T Communications Tariff F.C.C. Nos. 9 and 11, Transmittal No. 6788, 9 FCC Rcd 6165. (Com. Car. Bur. 1994).

Service in areas in which LECs currently offer split billing arrangements. These issues are discussed separately below.

A. Is it reasonable for AT&T to bill an end user customer for Feature Group A or B Connection Service when an end user has not affirmatively ordered this service from AT&T?

1. Background

19. In the Designation Order, the Bureau asked AT&T whether it is reasonable for AT&T to bill an end user customer for its Feature Group A or B Connection Service when an end user has not affirmatively ordered this service from AT&T. To that end, the Bureau directed AT&T to explain how the end user became an AT&T customer for Feature Group A and B Connection Service. The Bureau also directed AT&T to indicate whether it or the LECs notified end user customers of any changes in either their status as customers or in the billing of Feature Group A and B access service since the transport restructure occurred. Finally, the Bureau directed AT&T to describe in its response how an end user customer can either affirmatively order, or decline to receive, Feature Group A and B Connection Service from AT&T if the customer desires to continue receiving either the entrance facility or direct trunked transport rate elements from the LECs.

2. Pleadings

20. AT&T. In its Direct Case, AT&T contends that customers that use Feature Group A or B to obtain access to AT&T's POPs are now AT&T customers because their Feature Group traffic is riding on facilities for which AT&T is being billed.²⁹ AT&T claims that, prior to the local transport restructure, the end user customer was the LEC's customer of record and was responsible to the LEC for payment of all related access charges, regardless of whether the end user or AT&T, as the customer's agent, ordered the service from the LEC. According to AT&T, the LECs now bill AT&T for the access facilities used to provide entrance facilities and direct trunked transport for Feature Group A or B access to AT&T's POPs. AT&T argues that it is the LECs' customer of record for the flat-rated rate elements of Feature Group A and B access service, while the end user is the LEC customer of record for the usage sensitive rate elements of the service. It adds that the Feature Group A and B users in question are currently AT&T customers for the interexchange services which connect to the Feature Group A and B access service.³⁰

21. AT&T claims it notified all existing Feature Group A and B customers that it expected to file revisions to its interstate tariff to offer a connection service, adding that some

²⁹ AT&T Direct Case at Att. 1, pp. 1-3.

³⁰ Id. at Att. 1, pp. 3-4.

LECs may also have notified end user customers.³¹ It asserts that it would have notified existing Feature Group customers that they could either obtain connection service from AT&T or provide AT&T with a disconnect order if Transmittal 6788 had taken effect. AT&T claims that a customer must affirmatively communicate its intent to AT&T to order AT&T's Feature Group A and B Connection Service. AT&T asserts it will not provide resold connection service to a customer who either does not affirmatively request it from AT&T or who notifies AT&T it does not wish to accept the service. It argues that, if a customer does not affirmatively elect to obtain AT&T's Connection Service, or if the customer does not obtain alternative access to the AT&T POP, AT&T will assume the customer "no longer wishes the relevant service" and will "take steps to terminate the current services provided."³² Finally, AT&T asserts that an end user who desires LEC-provided access service can affirmatively order the LEC service through AT&T as part of AT&T's Access Coordination Function.³³

22. Oppositions. BellSouth and Southwestern Bell contend that they are properly charging AT&T for the access facilities used to carry traffic to AT&T's POP.³⁴ BellSouth argues that, contrary to AT&T's assertions, no customer of record existed for dedicated transport services prior to the local transport restructure, because the LECs controlled the circuit facility assignments and determined the facilities over which services were to be provided. BellSouth claims that customers can now order specific facilities which are dedicated to their use, and can control the circuit facility assignments. It argues that the POP owner became the customer of record for the entrance facilities to its POP when the local transport tariffs took effect.³⁵ Southwestern Bell asserts the Transport Order specified that the LECs should bill the entrance facility and direct trunked transport rate elements on a flat rated basis to the customer using those dedicated facilities. It concludes that the IXC to whom the entrance facilities are dedicated is the appropriate party to be billed for those facilities.³⁶

3. Discussion

23. We find that it would be an unreasonable practice under Section 201(b) of the Act for AT&T to bill an end user for Feature Group A and B Connection Service, unless the end

³¹ Id. at Att. 1, pp. 3-5 and Exhibit 1.

³² Id. at Att. 1, pp. 3-6.

³³ Id. at Att. 1, p. 5.

³⁴ BellSouth Opposition at 2-3; Southwestern Bell Opposition at 2-3.

³⁵ BellSouth Opposition at 2-3.

³⁶ Southwestern Bell Opposition at 2-3.

user has requested such service.³⁷ AT&T has represented in this proceeding that it will not provide its Feature Group A and B Connection Service absent an affirmative order from a customer. Customers who do not place an order with AT&T for its Connection Service will not be customers of AT&T for its Connection Service. The Feature Group customers must be presented with the options available to them for obtaining the entrance facilities they require, only one of which is that of obtaining the entrance facilities from AT&T.³⁸

24. If AT&T chooses to refile its offering, the refiled tariff should reflect its representation that it will not bill a customer for AT&T's Feature Group Connection Service unless the customer places an order with AT&T. Moreover, its tariff should contain specific and clear procedures by which a party wishing to become a customer of AT&T's Feature Group Connection Service can affirmatively place an order with AT&T, and a current customer can disconnect its service with AT&T. We also require that no Feature Group A or B service currently being provided to customers be terminated without at least 30 days' notice to these customers of the new affirmative ordering procedures, and referral to the LECs for information on alternatives to AT&T-provided service.

B. Is AT&T's practice of bundling the Access Coordination Function with Feature Group A and B Connection Service reasonable?

1. Background

25. AT&T Tariff F.C.C. No. 11, Section 3.3.4, currently describes the Access Coordination Function as follows:

The access coordination function provides for the design, ordering, installation coordination, pre-service testing and service turn-up, trouble sectionalization and restoration coordination on a channel provided by AT&T under this tariff or an equivalent channel provided by the Customer. In addition, the access coordination function is available on Feature Group A and B Switched Access Service channels.

³⁷ See *Capital Network System, Inc. v. FCC*, 28 F.3d 201, 206 (D.C. Cir. 1994).

³⁸ In these situations, it is possible that the LECs would continue to bill their end user customers for the direct trunked transport facilities for which AT&T now wishes to charge, under Transmittal 6788, as the direct trunked transport portion of its bundled Feature Group Connection Service. This potential double billing situation is addressed below in the portions of this Order which address AT&T's proposals to bundle various service elements under Transmittal No. 6788.

By Transmittal 6788, AT&T proposes to append the following sentence to Section 3.3.4:

When the access coordination function is ordered for Feature Group A or B switched access service channels, a Feature Group A/B connection, as specified in Section 8.2.8 or 8.2.9, respectively is also required.

The proposed text clearly would "bundle" AT&T's Coordination and Connection Services by requiring customers to order its connection service if they order its coordination service.

26. In the Designation Order, the Bureau asked AT&T whether it is reasonable for AT&T to bundle the Access Coordination Function with Feature Group A and B Connection Service. Specifically, AT&T was asked: (1) how its provision of a coordination service would differ under Transmittal 6788 from the coordination service it has previously provided to customers having voice grade special access service under the Access Coordination Function; and (2) if AT&T does not propose to provide a coordination service, as distinct from end-to-end service, in connection with Feature Group A and B access service, why this practice does not unreasonably restrict customers from taking a portion of their Feature Group A or B access service from the LECs.

27. In the Designation Order, the Bureau also sought to determine whether a Feature Group A or B customer can continue to receive its service from the LEC. A user of voice grade services cannot access an IXC's high capacity network absent a multiplexing function. The Bureau sought to determine how the interface between the LEC's voice grade access service and AT&T's high capacity interexchange network will operate if Feature Group A and B access to AT&T's POPs is not provided by means of AT&T's Feature Group A and B Connection Service, but is instead provided directly by the LECs. To that end, the Bureau directed AT&T to respond to these questions: (1) if the end user customer does not take AT&T's Feature Group A and B Connection Service, can that customer continue to receive Feature Group A or B access service from the LECs using a voice grade connection or must the customer purchase a high capacity facility and incur charges over and above the voice grade rates; (2) who determines the level of the network interface (e.g., voice grade, DS1, or DS3) at an AT&T POP; (3) if AT&T requires the facilities used to provide Feature Group A or B access service to connect at a high capacity interface at AT&T's POP, how will end users be able to use a LEC's voice grade transport and entrance facilities to enter AT&T's POP; or should AT&T, the LEC, or both provide the multiplexing necessary to meet AT&T's interface requirements; and (5) should AT&T, the LEC, or both provide a customer with voice grade transport from the end office to the IXC POP?

2. Pleadings

28. AT&T. AT&T claims that its provision of the Access Coordination Function under Transmittal 6788 does not differ from the coordination service it provided for customers having

a voice grade special access service prior to the local transport restructure.³⁹ It claims it is willing to continue to offer the Access Coordination Function separately from its proposed Feature Group A and B Connection Service as an option for customers who wish to receive their entire access service and bill from the LECs. AT&T asserts that both coordinated service and end-to-end service require similar ordering, provisioning and maintenance procedures. It adds that customers of the Access Coordination Function would receive the usage-sensitive portion of their Feature Group A or B access service from the LEC, and would receive a usage bill from the LEC and a flat-rated bill from AT&T.⁴⁰

29. AT&T asserts that end user customers who do not take AT&T's Feature Group A and B Connection Service can use the LECs' tariffed access service, but must use a DS1 interface to connect to AT&T's POP.⁴¹ AT&T contends that it requires customers to meet the DS1 interface level requirement it has established for its network. It argues that a carrier offering voice grade access service to end users is obligated to furnish the multiplexing required to deliver traffic to the IXC's POP at the IXC's required interface level, and should seek reimbursement through its access tariff.⁴²

30. Oppositions. Bell Atlantic opposes AT&T's DS1 interface requirement. It argues that AT&T's DS1 interface requirement forces users who need only a small number of voice grade circuits to subscribe to DS1 circuits from the LECs to connect to an AT&T POP.⁴³ Ameritech and US West assert AT&T's DS1 interface requirement is reasonable, but note that small Feature Group A and B access customers will be unable to purchase voice grade facilities directly from a LEC to interconnect with AT&T.⁴⁴ BellSouth and Southwestern Bell neither favor nor oppose AT&T's DS1 requirement; rather, they argue that customers who wish to purchase voice grade service have alternatives to subscribing to an IXC which requires DS1 and above interface levels.⁴⁵ Southwestern Bell asserts that it offers local transport at both voice

³⁹ AT&T Direct Case at Att. 1 pp. 5-7.

⁴⁰ Id.

⁴¹ Id. at 7 and Att. 1 pp. 7-8.

⁴² Id. at 7 and Att. 1 pp. 8-9.

⁴³ Bell Atlantic Opposition at 2.

⁴⁴ Ameritech Opposition at 2; US West Opposition at 3.

⁴⁵ BellSouth Opposition at 3-4; Southwestern Bell Opposition at 3-4. BellSouth argues that customers wishing to use BellSouth's entrance facilities to a POP can negotiate with the IXC to permit the use of lower interface levels to the POP, can order a DS1 or above facility from BellSouth to meet the POP owner's requirement, or can order access services to be provided to an IXC other than AT&T. Southwestern Bell contends that the end user should choose an IXC

grade and DS1 levels, and will not bill an end user for voice grade entrance facilities while actually providing a DS1 level entrance facility.⁴⁶

31. AT&T Reply. AT&T contends that the level of its interface requirement cannot be modified in this investigation because it is not a part of Transmittal 6788.⁴⁷ AT&T argues its interface requirement is sensible from a business standpoint for administrative and technological reasons.⁴⁸ It repeats that end users who do not wish to use AT&T's Feature Group A and B Connection Service can obtain their access service directly from the LECs, who are obligated as access providers to aggregate the end users' traffic to meet an IXC's interface requirements.⁴⁹

3. Discussion

32. We find that AT&T's bundling of its Access Coordination Function with its Feature Group A and B Connection Service is an unreasonable practice under Section 201(b) of the Act. Contrary to the assertions AT&T advances in its Direct Case, the language added by Transmittal 6788 to Section 3.3.4 constitutes a marked change in the way it provides access coordination, because it makes this service unavailable except to customers of AT&T's own Feature Group Connection Service. AT&T has offered no persuasive justification for the bundling of these service elements, nor has it explained why it should not make the Access Coordination Function available to customers who elect to obtain Feature Group access from the LECs, as has been AT&T's previous practice. Any refiled tariff offering Feature Group A and B Connection Service should reflect AT&T's representation that it will not bundle the Access Coordination Function with its Feature Group A and B Connection Service, and that it will continue to offer its Access Coordination Function to customers whether or not they obtain Feature Group A and B Connection Service from AT&T.⁵⁰ Thus, a refiled offering should specifically state that customers obtaining access into AT&T's POP can obtain either AT&T's Access Coordination Function or AT&T's Feature Group A and B Connection Service, or both. A bundled offering of the two services, if offered as an additional option, may be acceptable, provided that the coordination and connection services are made separately available on an unbundled basis.

33. We acknowledge that customers purchasing Feature Group A or B access from the LECs may gain access to AT&T's POP through a LEC-provided DS1 entrance facility. The

other than AT&T that will either pay for the DS1 interface or accept the voice grade connection.

⁴⁶ Southwestern Bell Opposition at 3-4.

⁴⁷ AT&T Reply at 2-3.

⁴⁸ AT&T Reply at 3.

⁴⁹ Id.

⁵⁰ AT&T Direct Case at 6.

level of AT&T's DS1 network interface is not a designated issue in this investigation. Therefore, it is not appropriate for us to determine the reasonableness of AT&T's high capacity interface in this order. We neither agree nor disagree in this proceeding with AT&T's contention that its interface requirement is reasonable for administrative or technological reasons. The level of AT&T's interface is not at issue, nor must we address it to determine the reasonableness of Transmittal 6788. Rather, the issue raised is whether Transmittal 6788 is offering an unlawfully bundled service to recoup the expenses incurred from its self-established high capacity requirement. To the extent that AT&T's network interface requirements may bring about additional costs for end users, we believe that these matters are better addressed in other proceedings, such as CC Docket No. 91-213, the local transport rate restructure proceeding.

C. Is AT&T's practice of bundling the entrance facility and direct trunked transport rate elements together reasonable?

1. Background

34. In the Designation Order, the Bureau asked whether AT&T's proposal to bundle the entrance facility and direct trunked transport rate elements together is reasonable. To that end, AT&T was directed to explain why it bundled these two transport rate elements in its Feature Group A and B Connection Service. If AT&T maintained that it cannot offer its connection service on an unbundled basis, the Designation Order required AT&T to explain why it cannot do so and why it is not unreasonable to restrict end user customers' ability to take the unbundled transport rate elements, including usage-based transport, to the entrance facility of the AT&T POP.

2. Pleadings

35. AT&T. AT&T argues that its bundling of the two transport rate elements is reasonable.⁵¹ AT&T contends that an unbundled service offering would not be cost-effective. It argues that it would incur additional multiplexing expenses which would increase rates if, for example, a customer purchased only the direct trunked rate element, because it would have to accept a network interface at below its required DS1 level. Moreover, AT&T claims that its ability to furnish and maintain circuits on an end-to-end basis would be impaired. Finally, it argues, customers would be confused by an unbundled offering.⁵² AT&T contends that it is offering the bundled rate elements as an additional option for customers. It argues that customers who wish to obtain the rate elements on an unbundled basis can do so from the LEC. AT&T asserts it is willing to amend its tariff to show separate charges for the direct trunked

⁵¹ Id. at Att. 1 pp. 9-11.

⁵² Id. at Att. 1 pp. 10-11.

transport and entrance facilities rate elements to enable customers to obtain more detailed information for comparative purposes.⁵³

36. Oppositions. Ameritech and Pacific argue that AT&T's proposal to sell the direct trunked transport and entrance facilities rate elements on a bundled basis will cause double billing.⁵⁴ Ameritech claims that it bills the Feature Group A customer, not AT&T, for direct trunked transport between the dial tone office and the serving wire center.⁵⁵ Similarly, Pacific claims that it bills the end user for direct trunked transport when AT&T orders a Feature Group A DS0 between an end office and the AT&T POP as the end user's agent.⁵⁶ Southwestern Bell, however, supports AT&T's proposal to bundle the two rate elements, claiming that end users have options other than taking AT&T's bundled service.⁵⁷ US West states it is unaware of any legal impediment to reselling the facilities on a bundled basis.⁵⁸

37. AT&T Reply. In its reply, AT&T again contends that the "bundling" of two resold LEC rate elements for reasons of efficiency and cost-effectiveness is not an unreasonable practice when the separate components are available from the LECs.⁵⁹

3. Discussion

38. At least two carriers, Ameritech and Pacific, assert they charge the end user, not AT&T, for the direct trunked portion of transport. They do not bill AT&T because the end user, not AT&T, is their designated customer for direct trunked transport.⁶⁰ We find that AT&T may not reasonably offer for resale a portion of access for which it is not being billed. If AT&T in its Connection Service bundles together the rate elements for the entrance facilities and direct trunked transport portions of its service, customers who receive LEC-provided direct trunked transport but require entrance facilities provided by AT&T will still be billed by AT&T for direct trunked transport. AT&T's offer to show separate charges in its tariff for the entrance facility and direct trunked transport portions of its service does not eliminate the likelihood that

⁵³ Id. at 8.

⁵⁴ Ameritech Opposition at 2-3; Pacific Opposition at 1-2.

⁵⁵ Ameritech Opposition at 2-3.

⁵⁶ Pacific Opposition at 1-2.

⁵⁷ Southwestern Bell Opposition at 1-2.

⁵⁸ US West Opposition at 2 and 2 n.3.

⁵⁹ AT&T Reply at 2.

⁶⁰ Ameritech Opposition at 2-3; Pacific Opposition at 1-2.

some customers will be charged twice for the direct trunked transport rate element. Further, by doing so, AT&T would shift the primary burden for resolving payment to customers of the service, many of whom may be less sophisticated than AT&T or the LEC.

39. We reject AT&T's argument that its bundled transport resale offering is merely an additional option for end user customers. Bundling is an additional option, as AT&T contends, provided customers have realistic alternatives. LECs have suggested that their Feature Group A and B access customers could purchase an entire DS1 entrance facility. Feature Group A and B access, however, is a voice grade service. Customers of this service require only a voice grade analog connection. While these customers may reject the option of purchasing an entire DS1 facility as expensive and inefficient, even this limited degree of unbundling is not available under Transmittal 6788. Customers purchasing their own DS1 facility may use as little as 1/24th of a DS1 facility, which can provide connections for twenty-four voice grade channels. Alternatively, a LEC could bill a single end user for a fractional share of the DS1, enabling multiple users to use the LEC's high capacity facility. This alternative makes voice grade access to AT&T's POP available through a billing mechanism rather than through the sale of high capacity multiplexing services to end users. We are aware of only two LECs that currently offer a "split billing" mechanism.⁶¹ Neither AT&T nor the LECs have suggested alternatives which are realistic at this time for most end users.

40. We therefore conclude that it is unreasonable for AT&T to offer the direct trunked transport and entrance facilities rate elements for resale under Section 201(b) of the Act exclusively on a bundled basis. If AT&T wishes to provide Feature Group A or B entrance facilities and direct trunked transport on a resale basis, it may do so, but such resale must be offered on an unbundled basis. A bundled service offered as an additional option may be acceptable if the resold direct trunked transport rate element is made separately available from the entrance facilities.

41. By Transmittal 6788, AT&T is attempting to recoup the costs for transport, which it obtains from the LECs on an unbundled basis. It is within AT&T's discretion to recoup those costs in any manner that is not found unlawful. AT&T has decided to recover those costs through the resale of Feature Group A and B access. However, in this order we find that the bundled tariff which AT&T has filed for this purpose is unlawful. By finding its bundled offering unlawful, we are not placing AT&T in a position where it cannot recoup the transport costs for which it is being charged. AT&T may refile an unbundled tariff at its discretion, thus recouping its costs. To the extent that AT&T incurs any additional costs in providing unbundled access, it may establish rates which recoup not only its access costs, but those additional costs as well.

⁶¹ Southwestern Bell Telephone Company Tariff F.C.C. No. 73, § 6.8.15; NYNEX Telephone Company Tariff F.C.C. No. 1, § 6.7.14.

D. Are the terms and conditions of service provided under Transmittal 6788 reasonable?

1. Background

42. In the Designation Order, the Bureau sought to determine whether the terms and conditions of service provided under Transmittal 6788 are reasonable. AT&T was directed to respond to the following questions: (1) is the existing Feature Group A and B traffic transported on facilities used to provide both special and switched access, or on facilities used to provide other switched access services; (2) does AT&T or the LEC determine the facilities over which the traffic travels? Does AT&T or the LEC control the assignment of circuits on these entrance facilities terminating at AT&T's POP; and (3) if AT&T controls this function, how can the Feature Group A or B end user remove its traffic from those entrance facilities to avoid being charged by AT&T for its use of the entrance facilities?

2. Pleadings

43. AT&T. AT&T responds that the transport facilities that the LECs bill AT&T for use in providing the existing Feature Group A and B traffic are "only used to provide special access services; no other switched access service traffic is carried on them. For transport facilities that the LECs charge AT&T as the Feature Group A or B customer of record, only Feature Group A or B traffic is carried."⁶² AT&T states that the LECs determined over which facilities the Feature Group A or B traffic traveled prior to the local transport restructure. It claims that all LEC entrance facilities and direct trunked facilities carrying Feature Group A or B traffic are now being charged to AT&T. AT&T claims that it uses its Connecting Facility Assignment, or CFA, control system to manage the assignment of circuits on entrance facilities terminating at its POP. AT&T argues that end users should remove their traffic from the entrance facilities charged to AT&T if they do not order AT&T's Connection Service.⁶³

44. Oppositions. Bell Atlantic disagrees with AT&T's assertion that all LEC entrance facilities and direct trunked facilities carrying Feature Group A or B traffic are now being charged to AT&T.⁶⁴ Bell Atlantic asserts that it bills end users directly for the direct trunked service when it multiplexes DS1 facilities at the serving wire center. It argues that AT&T's practices will cause double billing.⁶⁵ Southwestern Bell argues that AT&T, not the LEC, had

⁶² AT&T Direct Case at Att. 1 p. 11.

⁶³ Id. at Att. 1 p. 12.

⁶⁴ Bell Atlantic Opposition at 2, citing AT&T Direct Case, Att. 1 at 12.

⁶⁵ Bell Atlantic Opposition at 2-3.

CFA control of the facilities Southwestern Bell provided to AT&T's POP prior to restructure, and thus became the local transport facility customer under the local transport restructure.⁶⁶

45. AT&T Reply. AT&T claims the potential for double billing will not affect new customers, as they will be provisioned differently than current customers.⁶⁷ With respect to current Feature Group customers, AT&T claims it will "take the necessary steps, in consultation with the LECs, to ensure that no such double billing of an access element results." It claims it will work with the LECs either to eliminate multiple charges, or to ensure the customer's bill is credited to ensure that the customer does not pay twice. In addition, AT&T claims that its commitment to identify separate rates for the two resold LEC access services and to notify customers of possible double billing protects customers, who will detect that they are being billed by both AT&T and the LEC for the same items.⁶⁸

3. Discussion

46. For the reasons stated above in the discussion of AT&T's bundling of the services and rate elements under Transmittal 6788, we conclude that the terms and conditions in AT&T's tariff are unreasonable under Section 201(b) of the Act. LECs do not uniformly bill AT&T or the end user for all the flat-rated transport facilities used in providing Feature Group A or B access service. AT&T has admitted that, under a bundled offering, it is likely to bill at least some current Feature Group A or B access users for a rate element that these customers already obtain from the LECs. Its offer to mitigate potential double billing by identifying separate charges for the entrance facility and direct trunked transport rate elements on the customer's bill does not prevent the customer's being double billed. This "solution" merely shifts the primary burden of resolving the double billing problem from AT&T to the customer, who then must negotiate with both the LEC and AT&T in an attempt to prevent its paying twice for a situation that the customer did not create.

47. AT&T's offer to credit the customer's bill in the case of double billing is also unsatisfactory. Such a solution may be unlawful under Section 203 of the Communications Act, which states that a common carrier may not "refund or remit by any means or device any portion of the charges so specified, except as specified" in the tariff.⁶⁹ AT&T must include a separate option corresponding to each set of rates that it proposes to assess. It cannot offer the same service for two different sets of rates. Thus, the effective solution to such double billing is the unbundling of the services and rate elements.

⁶⁶ Southwestern Bell Opposition at 5.

⁶⁷ AT&T Reply at 4-5.

⁶⁸ Id. at 4 n.10.

⁶⁹ Section 203(c) of the Communications Act of 1934, 47 C.F.R. § 203(c).

E. Are the charges proposed to be included in Tariffs 9 and 11 pursuant to Transmittal 6788 reasonable?

1. Background

48. In the Designation Order, the Bureau sought to determine the reasonableness of the charges AT&T proposed to include in Tariffs 9 and 11 pursuant to Transmittal 6788. To that end, AT&T was directed to: (1) provide an example of how it derived the nonrecurring and recurring charges it proposes to assess, and to describe in detail the actual costs that are reflected in the nonrecurring and recurring charges, and the source of those costs;⁷⁰ (2) explain why a non-recurring charge is included in the rates for the connection service it proposes, and explain how it derived the non-recurring charge it proposes to assess; and (3) explain why it is not unreasonable to fail to exempt these customers from its nonrecurring charge, because the end user customers for this service are current LEC customers and because they currently appear to have in place the facilities for Feature Group A or B access service.

2. Pleadings

49. AT&T AT&T claims it based its proposed nonrecurring and recurring charges on expected demand for the service, the costs assessed it by the LECs, and market constraints on the connection charges.⁷¹ Further, AT&T asserts that its connection charges, which are in Tariff 11, should not be subject to price cap regulation because customers have alternatives to AT&T service. It argues that the Commission's regulation of the underlying LEC services is sufficient to ensure AT&T's Tariff 11 rates are reasonable.⁷² AT&T also claims it incurs nonrecurring charges when it installs a new service. It claims it would exempt all embedded base customers associated with the Feature Group A or B service from the nonrecurring charge.⁷³

50. Opposition. Southwestern Bell supports AT&T's contention that Transmittal 6788 offers a Tariff 11 type service that should not be subject to price cap regulation.⁷⁴

⁷⁰ This description should include the cost of the actual high capacity facilities used for Feature Group A and B Connection Service -- not the full voice grade charges.

⁷¹ AT&T Direct Case at Att. 1 pp. 13-15.

⁷² Id. at 11-12 and Att. 1 p. 14.

⁷³ Id. at Att. 1 p. 15.

⁷⁴ See Southwestern Bell Opposition at 2.

3. Discussion

51. We conclude that AT&T has not demonstrated that its proposed recurring charges are reasonable, but we make no finding in this Order that these charges are unreasonable. AT&T's assertions as to the unreviewability of the cost support for its purportedly streamlined service presume the presence of competitive alternatives to its service, which necessitates the unbundling of the entrance facility and direct trunked transport rate elements of the service it proposes to offer. If end users could purchase the entrance facility and direct trunked transport portions of the service separately from AT&T or the LECs, we might grant more credence to AT&T's primary argument: that market conditions and the LECs' tariffed rates will impose constraints on rates that customers will be willing to pay for the resold service. As we stated earlier, if AT&T wishes to provide Feature Group A or B entrance facilities and direct trunked transport on a resale basis, it may do so, but such resale must be offered on an unbundled basis. AT&T should conform any refiled tariff to its assertion that it will not impose the nonrecurring charge on customers who currently have Feature Group A or B services, but will charge only customers new to AT&T's Connection Service and related Tariff 9 services. Any changes in rate levels resulting from an unbundling by AT&T of its resold Feature Group A and B Connection Service may be made subject to investigation by Bureau order.

F. Is AT&T's practice of charging Feature Group A and B end users for Feature Group A and B Connection Service reasonable in areas where LECs currently offer split billing arrangements?

1. Background

52. The Designation Order sought to determine whether AT&T's practice of charging Feature Group A and B end users for its Feature Group A and B Connection Service is reasonable in areas where LECs currently offer split billing arrangements. AT&T was asked to: (1) describe currently available LEC split billing or other methods of LEC billing end user customers directly for the customer's portion of the high capacity facilities used; (2) discuss whether the current forms of split billing are reasonable. AT&T should also indicate whether these arrangements or some other form of split billing would solve the Feature Group A and B billing problem from the point of view of the end user customer and from AT&T's point of view; (3) to the extent split billing is available, AT&T should explain why it has failed to consider using that or other billing options so that end users can be billed only for the portion of the high capacity facilities used to transport their voice grade Feature Group A and B access traffic to AT&T's POP. AT&T should also explain why, in light of the existence of these split billing options, AT&T's practice of billing the Feature Group A and B end users under Transmittal 6788 is not unreasonable under Section 201(b) of the Act; and (4) explain whether it could use the mechanism in Tariff 11, Section 3.3.6, "Arrangement for LEC Use of Existing High Capacity Access" provided to AT&T, to recover from the LEC for LEC use of AT&T high capacity facilities to transport Feature Group A and B traffic to the AT&T POP.

2. Pleadings

53. AT&T. In its Direct Case, AT&T claims split billing is unacceptable in its present form.⁷⁵ It contends that costs associated with multiplexing, fill and maintenance expenses are not included by LECs when they compute the 1/24 (for a DS1 rate) or 1/672 (for a DS3 rate) reimbursement amount. It also argues that, under split billing, the LECs hold AT&T liable for payment if the end user defaults because AT&T is the customer of record. AT&T claims knowledge of only Southwestern Bell Telephone's tariffed split billing option. It contends that its tariff is not unreasonable even if split billing is unavailable.⁷⁶ AT&T also argues that Billing and Collection arrangements would create additional expenses for end users. According to AT&T, under a Billing and Collection arrangement, LECs bill the end user rates established by AT&T. AT&T asserts that it would pass on to the user any additional charges assessed it by the LECs under a Billing and Collection arrangement.⁷⁷

54. Finally, AT&T asserts that it cannot use Section 3.3.6 in Tariff 11 to recover from the LECs for the LECs' use of AT&T's high capacity facilities to transport Feature Group A and B traffic to the AT&T POP.⁷⁸ It claims that the referenced tariff section presumes that end user customers are LEC customers, and that the end user customers are the relevant customer of record. AT&T claims that the LECs have made AT&T the customer of record for the flat-rated portion of Feature Group A and B.⁷⁹

55. Oppositions. Ameritech, BellSouth, and US West oppose split billing.⁸⁰ Ameritech asserts that, because many LECs bill the IXC for the dedicated entrance facility, IXCs seek to recoup the costs of these dedicated entrance facilities in rates to its customers through tariffs such as Transmittal 6788. This is reasonable, Ameritech asserts, because otherwise customers receive a windfall at the expense of the IXC.⁸¹ Ameritech and US West argue that, because AT&T reasonably declines to accept traffic at lower than DS1 interface levels, and because split billing is too uneconomical to be satisfactory, Transmittal 6788 is a way for users to obtain only

⁷⁵ AT&T Direct Case at Att. 1 p. 1.

⁷⁶ Id. at Att. 1 pp. 15-17.

⁷⁷ Id. at Att. 1 p. 17.

⁷⁸ Id. at Att. 1 p. 18.

⁷⁹ Id.

⁸⁰ Ameritech Opposition at 2; BellSouth Opposition at 7-8; US West Opposition at 4.

⁸¹ Ameritech Opposition at 2.

the level of facilities they require for their Feature Group A or B service.⁸² Southwestern Bell agrees with AT&T that split billing is irrelevant to whether AT&T's efforts to resell the Entrance Facilities and Direct Trunked Transport rate elements are reasonable.⁸³

56. BellSouth claims that a billing and collection arrangement would best meet the needs of customers expressing a need for an alternative arrangement to the existing LEC tariffed shared network arrangements.⁸⁴ It contends that either a LEC, on a detariffed basis, or a third party billing and collection agent could receive, manage and process information provided by multiple sharing entities while at the same time ensuring protection of confidential information as well as provide fundamental billing and collection services.⁸⁵ Alternatively, BellSouth proposes the LEC could provide voice grade access services to its customers not based on the facilities actually utilized, but based on the voice grade capacity ordered by the customer.⁸⁶

57. AT&T Reply. AT&T argues that the comments uniformly show that split billing does not address AT&T's being billed by the LECs for the entrance facility transport element, and that the absence of split billing offerings by the LECs should not preclude AT&T's offering of Feature Group A and B Connection Service.⁸⁷

3. Discussion

58. Split billing is a billing arrangement that enables multiple customers to share or resell entrance facilities and direct-trunked transport facilities.⁸⁸ The question of split billing requirements was recently raised in the Supplemental Notice of Proposed Rulemaking in CC

⁸² Id. ; US West Opposition at 4-5. US West estimates that four percent of its Feature Group A lines -- approximately 300 AT&T end-user lines -- would be affected by any decision as to how to deal with the incompatibility between voice grade facilities and AT&T's DS1 interface requirement. US West Opposition at 5 n.8.

⁸³ Southwestern Bell Opposition at 2.

⁸⁴ BellSouth Opposition at 4-6.

⁸⁵ Id. at 5-6.

⁸⁶ Id. at 6-7.

⁸⁷ AT&T Reply at 2.

⁸⁸ See Transport Rate Structure and Pricing, CC Docket No. 91-213, Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, FCC No. 94-325, rel. Dec. 22, 1994.

Docket No. 91-213, which was adopted on December 15, 1994.⁸⁹ In light of the fact that we have found AT&T's tariff unlawful on other grounds, we decline to make any determinations regarding the reasonableness of AT&T's practices vis-a-vis LEC split billing. As for the mechanism in AT&T's Tariff 11 involving LEC charges, we similarly decline to interpret Section 3.3.6 of Tariff 11 at this time.

IV. CONCLUSION

59. In this Order, we find that it is unreasonable for AT&T to automatically bill end users for its Feature Group A and B Connection Service in the absence of an affirmative order from prospective customers. We conclude that it is unreasonable for AT&T to offer for resale in its Feature Group Connection Service the entrance facility and direct trunked transport rate elements on an exclusively bundled basis. We also conclude that it is unreasonable for AT&T to bundle its Access Coordination Function with its Feature Group A and B Connection Service. We make no conclusion as to the reasonableness of the charges in Transmittal 6788, absent unbundling of the entrance facility and direct trunked transport rate elements. AT&T may, if it chooses, offer Feature Group A and B Connection Service by filing a tariff that reflects our findings in this investigation, as specified in this Order, to be effective on 45 days' notice.

V. ORDERING CLAUSES


60. Accordingly, pursuant to Sections 4(i), 4(j), 201(b), 204(a), 205(a) and 403 of the Communications Act of 1934, 47 U.S.C. § § 154(i), 154(j), 201(b), 204(a), 205(a) and 403, WE FIND that AT&T Communications Tariff Nos. 9 and 11, Transmittal No. 6788, IS UNLAWFUL for the reasons specified in this Order.

61. IT IS ORDERED that AT&T Communications, Inc. SHALL FILE tariff revisions removing the tariff revisions filed under Transmittal No. 6788 no later than five days from the release date of this Order, to be effective on one day's notice.

62. IT IS FURTHER ORDERED that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket No. 94-120 IS TERMINATED.

63. IT IS FURTHER ORDERED that this Order takes effect on the date of its release.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁸⁹ Id.